

UNITED STATES DISTRICT COURT
DISTRICT COURT OF MASSACHUSETTS

Chidiebere Nwaubani)
(Plaintiff))
)
v.) CIVIL ACTION
) No. 1:13-CV-12552-JLT
Divina Grossman, in her official capacity as)
Chancellor, University of Massachusetts Dartmouth)
and in her individual capacity, et al.)
(Defendants))

**MOTION FOR CERTIFICATION PURSUANT TO F FEDERAL RULE OF
CIVIL PROCEDURE 54 (b) AND/ OR 28 U.S.C. § 1292(b)**

Chidiebere Nwaubani (Plaintiff) pursuant to Fed. R. Civ. P. 54 (b) and 28 U.S.C. § 1292(b) , by and through his counsel, respectfully submits this Motion for Certification of Court's Order of June 11, 2014 [50], "without oral argument and based only on the papers," dismissing Counts 2-28, 48 and 51 of the Second Amended Complaint, denying [Dkt. 41] Motion to Substitute Response, and without an opinion, combining motion for preliminary injunction [Dkt. 27] with trial on the merits.

In the alternative, Plaintiff humbly requests this Court to certify the Order for interlocutory appeal under 28 U.S.C. § 1292(b), or reinstate the dismissed counts of the Plaintiff's Second Amended Complaint (Complaint).

Certification under Under Rule 54(b) or 28 U.S.C. § 1292(b) is appropriate in the circumstances of this case because (a) Plaintiff's Second Amended Complaint (Complaint) plausibly asserts viable due process claims against Defendants arising from

suspension, suspension from teaching, placing him on an unpaid leave, the indefinite and undefined “paid leave” order of July 2013 as well as the bad faith and malicious recommendation to terminate his employment; (b) the Court’s partial Order effectively prevents Plaintiff from asserting procedural and substantive due process claims against Defendants, including his claims for conspiracy under 42 U.S.C § 1983; (c) Court’s Order determines distinct legal issues as to the elements of Due Process Claims and Conspiracy Under 42 U.S.C § 1983 and 42 U.S.C. § 1985(3) as well as the Court’s authority to exercise supplemental jurisdiction and grant an injunctive relief; (d) a final determination of this legal question is likely to facilitate the ultimate resolution of this litigation; (e) the Court’s Order involves controlling questions of law to which there is a substantial ground for dispute; (f) uniformity as regards the application of legal standard to determine whether a complaint passes muster under 42 U.S.C § 1983 and the circumstances that may warrant the issuance of preliminary injunction are critical not only within the First Circuit but nationwide; (g) Plaintiff finds a resolution of this legal questions compelling; (h) appellate resolution would facilitate settlement of the issues in this case and could obviate the need for trial; (i) resolution of the distinct legal issues by the appellate court would allow a one-time resolution even if there were further appeals; and (j) certification in this case will serve the interest of the parties and the administration of justice.

WHEREFORE, Plaintiff respectfully requests that this Court, for the facts and reasons set forth above and in the Memorandum of Law and Authorities in Support of this Motion, grant this Motion and grant such other relief as the Court deems just and proper.

Respectfully submitted this 23 day of June 2014 by:

s/ Eric Nwaubani

COUNSEL FOR PLAINTIFF

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1

I, Eric Nwaubani, counsel for Plaintiff, hereby certify that I sent an email to Ms. Denise Barton, counsel for the Defendants, regarding this motion but did not receive any response.

/s/ Eric Nwaubani
Eric Nwaubani

Certificate of Service

I, Eric Nwaubani, counsel for the Plaintiff hereby certify that a true copy of the above document was transmitted through the CM/ECF electronic filing system of the United Staes District Court, to Denise Barton.

/s/ Eric Nwaubani
Eric Nwaubani

June 23, 2013